

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Chrome Industries, Inc.
Cleveland, Ohio

Respondent

)
)
) DOCKET No. 5-CAA-032-98
)
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CONSENT AGREEMENT AND CONSENT ORDER

WHEREAS, Complainant, the Director, Air and Radiation Division, United States Environmental Protection Agency, Region 5, ("EPA") and Respondent, Chrome Industries, Inc., ("Chrome Industries"), the Parties herein, wishing to settle all matters pertaining to this case, and having consented to the entry of this Consent Agreement and Consent Order ("CACO"); NOW, THEREFORE, before the taking of any testimony, without an adjudication of any issues of law or fact herein, or an admission of liability or any specific question of fact or law by Respondent, the Parties consent to the entry of, and agree to comply with the terms of, this CACO.

I. Preliminary Statement

1. Respondent Chrome Industries, Inc., ("Chrome Industries"), is a corporation incorporated under the laws of the State of Ohio, located at 3041 Perkins Avenue, Cleveland, Ohio, 44114.

2. Chrome Industries' facility includes three hard chromium electroplating tanks which are subject to the requirements for existing hard chrome electroplating tanks contained in the National Emission Standard for Chromium Emissions from Hard and Decorative Electroplating and Chromium

Anodizing Tanks ("Chrome Plating NESHAP"), found at 40 C.F.R. Part 63, Subpart N.

3. The Complainant instituted this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4318 (1992), by issuing an Administrative Complaint and Notice of Proposed Order Assessing a Penalty against the Respondent on September 29, 1998.

4. The Complaint, which is fully incorporated herein by reference, alleged that emissions from Chrome Industries' hard chromium electroplating tanks exceeded the allowable emission limit of 6.6×10^{-6} gr/dscf under C.F.R. § 63.342(c)(I), and that Chrome Industries failed to conduct performance testing within the 180 day period specified under 40 C.F.R. § 63.7(a)(2)(iii), subjecting Chrome Industries to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

5. The Complaint proposed that Respondent be assessed a civil penalty of \$34,542 calculated in accordance with Section 113(e) of the Act, and the "Clean Air Act Stationary Source Civil Penalty Policy" (October 25, 1991) ("Penalty Policy").

6. Representatives of Complainant and Respondent have discussed the violations identified by EPA, have agreed to a schedule for Chrome Industries to achieve compliance with the requirements of the Chrome Plating NESHAP, and have agreed to the terms of an administrative compliance order under Section

113(a) of the Act. Accordingly this CACO is intended to fully resolve this matter; Chrome Industries will not be required to file an Answer to the Complaint.

7. As a result of information exchanged during settlement negotiations, EPA and Chrome Industries have agreed to enter into this CACO.

8. The parties agree that resolution of this matter through entry of this CACO is an appropriate means of resolving this matter.

9. This CACO is issued to conclude the administrative penalty matter initiated by the EPA Complaint issued to Respondent.

II. General Terms of Settlement

10. Respondent admits that EPA has jurisdiction over the matter, neither admits or denies the findings of fact and conclusions of law in the Complaint, agrees that settlement of this action is in the best interests of the parties and in the public interest, and consents to the terms of this CACO as set forth herein.

11. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint or this CACO, and waives any and all rights to appeal this settlement and/or CACO.

12. Respondent has agreed to the terms of an administrative compliance order under Section 113(a) of the Act, containing a schedule for Chrome Industries to achieve and maintain compliance with the applicable requirements of the Chrome Plating NESHAP.

13. Respondent certifies that it is now in compliance with the Act and the requirements of 40 C.F.R. 63, Subpart N.

14. Pursuant to Section 113(e) of the Act, and based on the foregoing, the nature of the violations alleged in the Complaint, information exchanged by the parties, consideration of the steps Respondent took to achieve compliance, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$30,000. Complainant herein accordingly mitigates the proposed penalty amount and Respondent is hereby assessed a penalty in the amount of \$30,000.

15. Respondent agrees to the assessment of a civil penalty as provided in this CACO for the violations alleged in the Complaint.

III. Penalty Payment

16. Respondent shall pay the United States the \$30,000 civil penalty amount by paying \$6,000 or before October 31, 1998, and twenty four subsequent monthly installments of \$1,000, with the first installment due on November 30, 1998. Each installment shall be due on or before the last day of each calendar month over the payment period, with the last installment due on October 30, 2000. Receipt of payment within 30 days of the respective due date shall not be subject to the provisions of Par. 20, below. Respondent may elect to pay any remaining balance in advance of its due date.

17. Respondent shall pay the civil penalty by forwarding a cashier's or certified check for each installment, as specified in paragraph 16, above, payable to the order of the "Treasurer of the United States of America," in the appropriate amount, to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

The check shall bear the case docket number set forth on the Complaint.

18. A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall send a copy of each check and transmittal letter to:

- 1) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (MF-19J)
Chicago, Illinois 60604;
- 2) Julie Brandt
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604; and
- 3) Andre Daugavietis
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604.

19. Respondent's failure to timely comply with any material and substantial provision of this CACO shall render the entire unpaid portion of the assessed penalty of \$34,542 immediately due and payable, together with all accrued interest. Such failure may also subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413 (d)(5), to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below. In any such collection action, the validity, amount and appropriateness of this CACO or the penalty and charges assessed hereunder shall not be subject to review.

20. Late Payment Provisions. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. §§ 3717, 3731, Respondent shall pay interest and penalties on debts owed to the United States and a charge to cover the costs of debt collection,

including processing and handling costs and attorneys fees. If the civil penalty is not paid pursuant to the terms of this CACO, Respondent shall pay the following amounts:

- a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) [see 4 C.F.R. § 102.13(c)] from the date a copy of this CACO as issued is mailed to Respondent, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the date a such copy of this CACO is mailed to Respondent. In addition, no interest shall be payable on any portion of the assessed penalty that is suspended and deferred and is not subsequently required to be paid.
- b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for any month in which any portion of the assessed penalty is more than 30 days past due.
- c. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the full amount of the assessed penalty, interest and handling charges, Respondent shall be liable to pay the United States' enforcement and collection expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

V. General Provisions

21. Nothing in this CACO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other Federal, state or local laws or statutes.

22. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

23. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

24. Nothing in this CACO shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

25. This CACO represents a full and final settlement of any and all claims by EPA against Respondent arising from the Complaint.

26. This CACO shall be binding upon all Parties to this action, and their successors and assigns. The undersigned representative of each Party to this CACO certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

27. Each party shall bear its own costs, attorney fees and disbursements in this action.

28. This CACO constitutes the entire agreement between the parties.

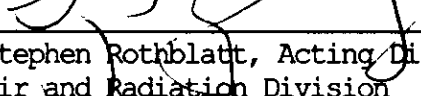
29. Respondent and EPA agree to issuance of the accompanying Consent Order.

In the Matter of: Chrome Industries, Inc.
Docket No. 5-CAA-032-98

The foregoing Consent Agreement is Hereby Stipulated, Agreed, and Approved for Entry:

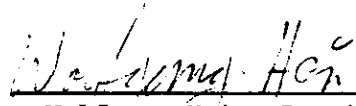
**U.S. ENVIRONMENTAL PROTECTION AGENCY,
COMPLAINANT**

Date: 11/5/98

By:  FOR
Stephen Rothblatt, Acting Director
Air and Radiation Division
Region 5
U.S. Environmental Protection Agency

**CHROME INDUSTRIES, INC.
RESPONDENT**

Date: 10-22-98

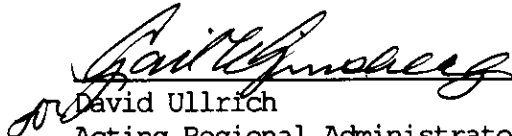
By: 
Wolfgang Hein, President
Chrome Industries, Inc.

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CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent, Chrome Industries, Inc., is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of this Consent Agreement and Consent Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

Dated: 11/5/98


David Ullrich
Acting Regional Administrator
Region 5
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that I filed the original of the foregoing Consent Agreement and Consent Order (CACO) Assessing Administrative Civil Penalties Against Chrome Industries, Inc., Docket No. 5-CAA-032-98 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the CACO to:

Wolfgang Hein, President
Chrome Industries, Inc.
3041 Perkins Avenue
Cleveland, Ohio 44114

P140 893 005
Certified Mail Number

William J. Mittendorf,
Registered Agent for
Chrome Industries, Inc.
24441 Detroit Road
Westlake, Ohio 44145

Michael S. McMahon, Esq.
McMahon, DeGulis, Hoffmann & Blumenthal
Caxton Building, Suite 650
812 Huron Road
Cleveland, Ohio 44115-1126

on the 16th day of October, 1998.

Shwanda Mayo
Shwanda Mayo, Secretary
ARD/AECAB/AECAS (MN/OH)